

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

UNITED STATES OF AMERICA

V.

McWANE, INC., et al.,

Defendants.

**CRIMINAL ACTION NO.
CR-04-PT-0199-S**

MEMORANDUM OPINION AND ORDER

The court presently rules that oral responses to inquiries by EPA and/or ADEM officials would be deemed “testimonial” under *Crawford v. Washington*, 541 U.S. 36 (2004), and subject to the Confrontation Clause holdings of *Crawford*. That such responses are “testimonial” is bolstered by the position taken by the Government in Counts 24 and 25. Business records, however, are not so governed. *See United States v. Garnett*, 122 F.3d 1016 (11th Cir. 1997).

This 20th of April, 2005.

ROBERT B. PROPST

ROBERT B. PROPST
SENIOR UNITED STATES DISTRICT JUDGE